

Case No. 2015-1511

**UNITED STATES COURT OF APPEALS FOR THE FEDERAL CIRCUIT**

FONTEM HOLDINGS 1 B.V.,

Appellant,

v.

CB DISTRIBUTORS, INC., DR DISTRIBUTORS, LLC,

Appellees,

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Appeal from the United States Patent and Trademark Office,  
Patent Trial and Appeal Board

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**APPELLEES' CB DISTRIBUTORS, INC. AND DR DISTRIBUTORS,  
LLC'S UNOPPOSED MOTION FOR SIXTY-DAY EXTENSION TO FILE  
RESPONSIVE BRIEF**

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Dated: August 14, 2015

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*CB Distributors, Inc. and  
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Form 9

**FORM 9. Certificate of Interest****UNITED STATES COURT OF APPEALS FOR THE FEDERAL CIRCUIT**

\_\_\_\_\_ v. \_\_\_\_\_

No. \_\_\_\_\_

**CERTIFICATE OF INTEREST**

Counsel for the (petitioner) (appellant) (respondent) (appellee) (amicus) (name of party)

\_\_\_\_\_ certifies the following (use "None" if applicable; use extra sheets if necessary):

1. The full name of every party or amicus represented by me is:

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

2. The name of the real party in interest (if the party named in the caption is not the real party in interest) represented by me is:

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

3. All parent corporations and any publicly held companies that own 10 percent or more of the stock of the party or amicus curiae represented by me are:

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

4. The names of all law firms and the partners or associates that appeared for the party or amicus now represented by me in the trial court or agency or are expected to appear in this court are:

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_  
Date\_\_\_\_\_  
Signature of counsel\_\_\_\_\_  
Printed name of counsel

Please Note: All questions must be answered

cc: \_\_\_\_\_

Pursuant to Federal Rules of Appellate Procedure 26(b) and 27 and Federal Circuit Rules 26(b) and 27, Appellees CB Distributors, Inc. and DR Distributors, LLC (“Appellees”) move for a sixty-day extension of time to file their responsive brief. Appellees have not sought any previous extensions in this case. Currently, Appellees’ responsive brief must be filed by September 14. If the extension is granted, the brief would be due by November 13. Counsel for Appellant Fontem Holdings 1 B.V. (“Fontem”) does not oppose this requested extension.<sup>1</sup> (Dec. of Nicole M. Smith in Support of Unopposed Motion for Extension of Time at ¶ 5).

Appellees have good cause for the requested extension because Appellees’ counsel has commitments in other matters between now and the current September 14 deadline, making the deadline difficult to make. For example, Nicole M. Smith is lead counsel for Appellees in district court litigation with Fontem, which is in the midst of expert discovery and pre-trial preparation. (*Id.* at ¶ 3.) During the month of August, Appellees’ counsel will depose Fontem’s infringement expert and damages expert as well as assist in the defense of the deposition of Appellees’ own damages expert. (*Id.*) Additionally, the deadline for filing motions in the district court litigation, including summary judgment motions, is currently set for September 4<sup>th</sup>, 2015. (*Id.*)

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<sup>1</sup> Appellant agreed not to oppose the motion on the condition that Appellees would not oppose an extension of up to 30 days for Appellant’s reply brief so as to avoid having the due date of the reply brief conflict with the Thanksgiving holiday.

Appellees' counsel David L. Fehrman is involved in preparing a reply brief in related *inter partes* review case number IPR2015-01027. (*Id.* at ¶ 4.)

Furthermore, Mr. Fehrman is also busy with many other matters in the next few months including negotiations in Japan and two Patent and Trademark Office reexamination hearings. (*Id.*)

In sum, the commitments of Appellees' counsel make it difficult to meet the September 14, 2015 deadline. Thus, Appellees respectfully request that the unopposed sixty-day extension be granted.

Dated: August 14, 2015

/s/ Nicole M. Smith  
Nicole M. Smith  
Attorneys for Appellees  
*CB Distributors, Inc. and*  
*DR Distributors, LLC*

**DECLARATION OF NICOLE M. SMITH**

1. I am counsel for Appellees' CB Distributors, Inc. and DR Distributors, LLC in this appeal, which concerns U.S. Patent No. 8,156,944, titled "Aerosol Electronic Cigarettes." I have personal knowledge of the facts below.

2. My colleague David Fehrman and I expect to do the majority of the work in preparing Appellees' responsive brief. As a result of extensive commitments during the months of August and September, it would be difficult for us to complete Appellees' responsive brief by September 14, 2015.

3. For example, I am lead counsel for Appellees in district court litigation involving nine other patents asserted by Appellant Fontem (consolidated for pretrial purposes under cause number CV-14-1645-GW (C.D. Cal.)). That litigation is swiftly proceeding towards trial with an expert discovery cutoff set for August 27, 2015. During the month of August, Appellees will depose Appellant's infringement expert and damages expert. Appellees will also assist in the defense of Appellees' damages expert. In addition, the deadline for filing motions in the district court litigation, including summary judgment motions, is currently set for September 4<sup>th</sup>, 2015. Thus, I will be very busy with these commitments during the months of August and September. As such, it would be difficult to complete Appellees' responsive brief by the current deadline.

4. My colleague David Fehrman is also busy during the months of August and September. Mr. Fehrman is involved in preparing a reply brief in *inter partes* review case number IPR2015-01027, which is an *inter partes* review of another patent asserted by Appellant Fontem in the district court litigation. Mr. Fehrman is involved in negotiations in Japan in August and September. Mr. Fehrman also has two Patent and Trademark Office reexamination hearings scheduled during this timeframe.

5. On August 11, I contacted Jonathan McFarland, counsel for Appellant, to inquire as to whether Appellant would oppose Appellees' request for a sixty-day extension of time. Mr. McFarland indicated that Appellant would not oppose such a request on the condition that Appellees would not oppose an extension of up to thirty-days for Appellant's reply brief so as to avoid the due date of the reply brief conflict with the Thanksgiving holiday.

I declare under penalty of perjury that the foregoing is true and correct to the best of my knowledge.

Dated this 14<sup>th</sup> day of August, 2015 at Los Angeles, California.

/s/ Nicole M. Smith  
Nicole M. Smith

**CERTIFICATE OF SERVICE**

I hereby certify that, pursuant to Fed. R. App. P. 25 and Fed. Cir. R. 25(c), I electronically filed the foregoing using the Court's CM/ECF filing system on this 14<sup>th</sup> day of August, 2015. Counsel for Appellant and Counsel for Appellees were electronically served by and through the Court's ECF system pursuant to Fed. R. App. P. 25.

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